

STATE OF NORTH CAROLINA

WAKE COUNTY

THE NORTH CAROLINA STATE BAR,

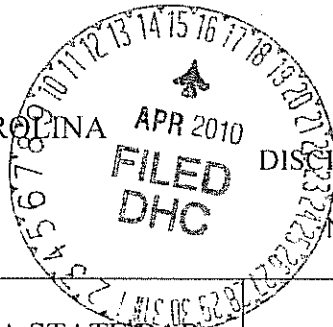
Plaintiff

v.

MARCIA Y. BURTON, Attorney,

Defendant

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
10 DHC 19



COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar (hereafter "State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, Marcia Y. Burton (hereafter "Defendant" or "Burton"), was admitted to the North Carolina State Bar in 1996 and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all or part of the relevant periods referred to herein, Burton was engaged in the practice of law in the State of North Carolina and maintained a law office in Charlotte, Mecklenburg County, North Carolina.

4. Burton represented debtors in the United States Bankruptcy Court for the Western District of North Carolina ("the Bankruptcy Court") from 2004 through early 2009.

5. Burton's bankruptcy clients were required by law to complete a consumer credit counseling course before their bankruptcy petitions were filed. After her clients completed this course, Burton obtained their Consumer Credit Counseling Certifications ("CCC Certifications") for submission to the Bankruptcy Court.

6. Burton's bankruptcy clients were also required to complete a personal financial management instruction course within 45 days after their creditors' meetings in order to receive a bankruptcy discharge.

FIRST CLAIM FOR RELIEF

7. Paragraphs 1 through 6 are re-alleged and incorporated as if fully set forth herein.

8. Many of Burton's bankruptcy clients completed the required consumer credit counseling course through Hummingbird Credit Counseling and Education, Inc. ("Hummingbird"). When her clients completed Hummingbird's online course, Burton obtained their CCC Certifications directly from Hummingbird.

9. Burton collected the \$34.00 cost of the CCC Certification from her clients at the outset of the representation, and Burton was responsible for paying that amount to Hummingbird.

10. The \$34.00 payments Burton received from her clients for the cost of their CCC Certifications were entrusted funds.

11. Burton deposited the \$34.00 payments she received from her clients for the cost of their CCC Certifications into her personal bank account.

12. From May 2007 through July 2008, Burton collected the \$34.00 cost of the credit counseling course from her clients but did not pay Hummingbird for her clients' CCC Certifications.

13. Burton failed to pay Hummingbird in excess of \$2,000.00 for costs attributable to her clients' CCC Certifications.

14. Burton used the entrusted funds owed to Hummingbird for personal expenses.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of her actions as follows:

- (a) By depositing entrusted funds into her personal bank account rather than a trust account, Burton failed to deposit entrusted funds in a trust account in violation of Rule 1.15-2(b) and failed to maintain entrusted funds separate from her personal funds in violation of Rule 1.15-2(a); and
- (b) By using the entrusted funds owed to Hummingbird for personal expenses, Burton failed to promptly pay entrusted funds to a third party in violation of Rule 1.15-2(m), used entrusted funds for her own benefit in violation of Rule 1.15-2(j), committed a criminal act reflecting adversely on her honesty, trustworthiness or fitness as a lawyer—to wit: embezzlement—in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, deceit, or misrepresentation in violation of Rule 8.4(c).

SECOND CLAIM FOR RELIEF

15. Paragraphs 1 through 14 are re-alleged and incorporated as if fully set forth herein.

16. On 27 September 2007, Burton filed a Chapter 13 bankruptcy case on behalf of Jerry McDougal.

17. The petition Burton prepared and filed on behalf of McDougal included a representation to the Bankruptcy Court that McDougal had paid Burton a total of \$650.00 in attorney's fees before the petition was filed.

18. This representation was false, because at the time Burton filed the petition, McDougal had paid Burton approximately \$958.00 in attorney's fees.

19. On 8 November 2007, Burton filed a Chapter 13 bankruptcy case on behalf of Ricky Peete.

20. The petition Burton prepared and filed on behalf of Peete included a representation to the Bankruptcy Court that Peete had paid Burton a total of \$650.00 in attorney's fees before the petition was filed.

21. This representation was false, because at the time Burton filed the petition, Peete had paid Burton approximately \$958.00 in attorney's fees.

22. Shortly after Peete's bankruptcy petition was filed, he lost his job.

23. Peete informed Burton that he was no longer employed at some point before the 26 December 2007 creditors' meeting in his case. Burton told Peete not to volunteer this information at the creditors' meeting.

24. At the 26 December 2007 creditors' meeting, the Bankruptcy Trustee asked Peete about his employment status and Peete said that he was still employed as stated in his petition.

25. Peete made this false statement about his employment status under oath, and Burton was present when he made the false sworn statement.

26. Neither Burton nor Peete took any action to correct the false representation Peete made under oath to the Trustee at the creditors' meeting.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of her actions as follows:

- (a) By preparing and filing petitions containing false representations regarding the amount of fees she had received from McDougal and Peete, Burton made false statements of material fact to the tribunal in violation of Rule 3.3(a) and

engaged in conduct involving dishonesty, deceit, and misrepresentation in violation of Rule 8.4(c);

(b) By instructing her client to withhold material information from the Bankruptcy Court, Burton engaged in conduct involving deceit in violation of Rule 8.4(c); and

(c) By failing to take any remedial action to correct Peete's false statement under oath at the creditors' meeting, Burton failed to remedy her client's presentation of false evidence to the tribunal in violation of Rule 3.3(a) and (b) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

THIRD CLAIM FOR RELIEF

27. Paragraphs 1 through 26 are re-alleged and incorporated as if fully set forth herein.

28. On 9 August 2007, Burton filed a Chapter 7 bankruptcy case on behalf of Charmaine Hernandez.

29. In October 2007, one of Hernandez's creditors filed a motion for relief from the bankruptcy stay. Burton failed to respond to this motion, and the creditor was given relief from the stay. Thereafter, the creditor repossessed Hernandez's vehicle.

30. Burton later sought reconsideration of the order granting relief from stay in Hernandez's case. Burton calendared this motion for hearing but failed to appear on the hearing date she had selected.

31. In December 2007, Hernandez's case was closed without discharge because Hernandez had not completed the personal financial management instruction course within 45 days after her creditors' meeting.

32. When Hernandez learned her case had been closed without discharge, she immediately took the financial management course. She also attempted to contact Burton but Burton did not respond.

33. Six months after Hernandez's case was closed, Burton wrote an email to Hernandez which stated:

“[M]otion paperwork is attached. There was [a] question about the date the financial management course was taken. We believed that it was taken within the deadline and filed it that way. Actually it was outside the 45 day window but due to the delay [I] had decided to pay the reopen fee of [\$]260 out of my pocket just to get things speeded up.”

34. At the time she wrote this email to Hernandez, Burton had not sought to reopen Hernandez's bankruptcy case nor had she paid the fees required to reopen the case.

35. Burton never sought to reopen Hernandez's case, nor did she ever pay the fees required to reopen the case.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of her actions as follows:

- (a) By failing to respond to the creditor's motion for relief from stay, failing to appear at the hearing on her motion to reconsider the relief from stay, and failing to take any action to reopen Hernandez's case, Defendant failed to act with reasonable diligence in representing her client in violation of Rule 1.3 and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (b) By failing to respond to Hernandez's request for information about her case for nearly six months, Defendant failed to timely respond to a reasonable request for information in violation of Rule 1.4(a); and
- (c) By falsely stating to Hernandez that she had paid the required fees and sought to reopen Hernandez's bankruptcy case, Defendant knowingly made a false statement of fact in violation of Rule 4.1 and engaged in conduct involving deceit or misrepresentation in violation of Rule 8.4(c).

FOURTH CLAIM FOR RELIEF

36. Paragraphs 1 through 35 are re-alleged and incorporated as if fully set forth herein.

37. In November 2007, Burton prepared a Chapter 7 bankruptcy petition on behalf of Calvin and Victoria Scott and filed it with the Bankruptcy Court.

38. The petition prepared and filed by Burton averred that the Scotts had obtained their CCC Certification prior to filing. This statement was false.

39. Burton either knew at the time she filed the petition that the statement regarding the Scotts' CCC Certification was false, or learned soon thereafter that the statement was false.

40. Burton took no action to correct the false statement in the petition regarding the Scotts' CCC Certification.

41. The Scotts' petition was dismissed for failure to file necessary documents. Six weeks later, Burton filed a second Chapter 7 petition on behalf of the Scotts.

42. In the second petition, Burton failed to disclose the earlier Chapter 7 case. Burton knew at the time she filed the Scotts' second petition that she was obligated to disclose her clients' prior bankruptcy case to the Court.

43. The Scotts were ordered to appear and show cause for failure to disclose the previous filing. They appeared as ordered by the Court, but Burton did not appear at the hearing to represent them.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of her actions as follows:

- (a) By preparing and filing with the Bankruptcy Court a petition falsely stating that the Scotts had obtained the CCC Certification, and by failing to correct that false statement, Defendant made a false statement of material fact to the tribunal and/or failed to correct a false statement of material fact previously made to the tribunal in violation of Rule 3.3(a) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d); and
- (b) By failing to disclose the Scotts' prior Chapter 7 case in the second petition and by failing to appear at the show cause hearing, Burton failed to act with reasonable diligence on behalf of her clients in violation of Rule 1.3, knowingly disobeyed obligations under the rules of a tribunal in violation of Rule 3.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

FIFTH CLAIM FOR RELIEF

44. Paragraphs 1 through 43 are re-alleged and incorporated as if fully set forth herein.

45. During some or all of her practice in the Bankruptcy Court, Burton solicited potential clients by sending direct mail solicitation letters to individuals facing foreclosure or repossession.

46. Burton's direct mail solicitation letters contained statements such as:

- (a) "save your house immediately without paying a lot of money,"
- (b) "in the vast majority of cases, I can help you save your home," and
- (c) "regardless of your present mortgage situation, I will be able to assist you."

47. The statements in Burton's solicitation letters set forth in paragraph 46 above were likely to create an unjustified expectation about results Burton could achieve for potential clients.

48. The phrase “This is an Advertisement for Legal Services” (“the advertising notice”) appeared in Burton’s solicitation letters, but it was not at the beginning of the body of the letter, was not printed in capital letters, and was in font smaller than Burton’s name in the letterhead.

49. Burton entered into written contracts for legal services with her bankruptcy clients using a form representation agreement (Burton’s standard contract with her bankruptcy clients is hereinafter referred to as the “representation agreement”).

50. Burton’s representation agreement provided that Chapter 7 bankruptcy clients would pay a flat fee for her legal services. The agreement stated: “In most cases, Attorney agrees and allows the Client to make payments on the above fee if necessary. . . . Failure to adhere to the payment plans will result in additional charges being assessed against the Client, withdrawal of representation by Attorney, and possible dismissal of your case.”

51. Burton’s representation agreement also stated, “Attorney may withdraw from the Client’s representation in this matter at any time for non payment.”

52. At the time Burton used this representation agreement, local rules for the Bankruptcy Court provided: “Any attorney who files a bankruptcy petition for or on behalf of a debtor shall remain the responsible attorney of record for all purposes including the representation of the debtor in all matters that arise in the case.” The local rules also stated: “[A]n attorney may be relieved of the duty to represent the debtor only upon motion, and after notice and a hearing, on the order of this Court.”

53. Burton’s representation agreement contained misleading statements about Burton’s ability to unilaterally withdraw if not paid and the threat of dismissal of the client’s petition for non-payment of attorney’s fees.

54. 11 U.S.C. § 362(a)(6), the “automatic stay” provision of the Bankruptcy Code, prohibits creditors from attempting to collect pre-petition debts after the debtor’s bankruptcy petition has been filed.

55. The automatic stay provision prohibits bankruptcy attorneys from collecting attorney fees from a debtor client after the bankruptcy petition is filed.

56. Burton’s clients signed the representation agreement, and therefore incurred an obligation to pay Burton, before their bankruptcy petitions were filed.

57. By collecting fees over time as contemplated by the representation agreement, Burton collected pre-petition debts from her clients after their bankruptcy petitions had been filed and the bankruptcy stay went into effect.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of her actions as follows:

- (a) By sending solicitation letters containing statements that were likely to create an unjustified expectation about the results she could achieve for potential clients, Burton made false or misleading communications about her services in violation of Rule 7.1(a)(2);
- (b) By failing to include the advertising notice in the required place, size, and font in her solicitation letter, Burton violated Rule 7.3(c);
- (c) By using a representation agreement containing misleading statements about her ability to unilaterally withdraw if not paid and the threat of dismissal of the client's petition for non-payment of attorney's fees, Burton made false or misleading communications about her services in violation of Rule 7.1(a) and engaged in conduct involving misrepresentation in violation of Rule 8.4(c); and
- (d) By collecting fees from her clients after their bankruptcy petitions were filed, in violation of 11 U.S.C. § 362(a)(6), Burton made an agreement for and/or collected an illegal fee in violation of Rule 1.5(a).

SIXTH CLAIM FOR RELIEF

58. Paragraphs 1 through 57 are re-alleged and incorporated as if fully set forth herein.

59. In 2008, the Bankruptcy Administrator filed several motions in the Bankruptcy Court seeking sanctions against Burton, disgorgement of fees paid to Burton by bankruptcy clients, and review of Burton's fitness to practice before the Bankruptcy Court.

60. As grounds for these motions, the Administrator cited a pattern of conduct by Burton that was detrimental to her bankruptcy clients, including neglect of their cases, collection of attorney's fees after the bankruptcy petition had been filed, failure to communicate, and failure to appear at meetings with the Bankruptcy Trustee.

61. As grounds for these motions, the Administrator also cited a pattern of conduct by Burton that was disruptive to the orderly administration of the Bankruptcy Court, including habitual filing of deficient petitions and failure to timely correct those deficiencies, re-filing cases that had been closed without discharge, failing to disclose material information to the Trustee, and failure to appear at scheduled proceedings and meetings on behalf of her clients.

62. The Bankruptcy Court conducted four days of evidentiary hearings on the Administrator's motions, and on 23 January 2009, it entered a 102-page order finding and concluding that the Administrator's allegations had overwhelmingly been proven.

63. The Court's 23 January 2009 order characterized Burton's conduct as "a disappointing case of an attorney operating a law practice outside the bounds of applicable law; a court's local Rules; the North Carolina Rules of Professional Conduct; and in total disregard for her clients' best interests."

64. The 23 January 2009 order suspended Burton from practice before the Bankruptcy Court for an indefinite period, but for no less than one year. It also required Burton to comply with certain conditions in order to be eligible for reinstatement.

65. The Bankruptcy Court stated that the terms of its order insured that "the public will be protected from further abuse and the dignity of this Court will be maintained."

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of her actions as follows: By engaging in a pattern of conduct detrimental to her clients and disruptive to the orderly administration of the Bankruptcy Court, and by consuming considerable resources of the Court hearing evidence related to this pattern of conduct, Burton engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

SEVENTH CLAIM FOR RELIEF

66. Paragraphs 1 through 65 are re-alleged and incorporated as if fully set forth herein.

67. In April 2008, Sharee Broadnax filed a grievance with the State Bar regarding Burton's handling of Broadnax's Chapter 7 bankruptcy case. The grievance was referred to the Mecklenburg County Bar Grievance Committee ("local grievance committee") for investigation.

68. The local grievance committee notified Burton of the grievance filed by Broadnax, and Burton provided a written response.

69. Thereafter, the local grievance committee investigator sent Burton an email posing a number of follow up questions and requesting documentation.

70. Burton did not answer the investigator's follow up questions nor did she provide the requested documentation.

71. Several months later, the local grievance committee investigator sent Burton a letter reminding her of the outstanding request for information and requesting an immediate response. Burton failed to respond to this letter.

72. In November 2008, Lloyd E. Gaddy paid Burton \$775.00 to pursue Chapter 13 bankruptcy on his behalf.

73. Gaddy's bankruptcy case was not completed as of January 2009, when Burton was suspended from practice before the Bankruptcy Court.

74. Burton did not refund any of the fees paid by Gaddy, and in May 2009, Gaddy filed a Petition for Resolution of Disputed Fee ("fee dispute") with the State Bar.

75. Gaddy's fee dispute was referred to the Mecklenburg County Bar Fee Dispute Resolution Committee ("local fee dispute committee").

76. A representative of the local fee dispute committee attempted to contact Burton at various phone numbers and notified Burton of the fee dispute by mail.

77. Burton failed to respond to the letter or phone calls from the local fee dispute committee.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. §§ 84-28(b)(2) and (b)(3) in that Defendant:

- (a) Failed to respond to a formal inquiry by a disciplinary authority in violation of N.C.G.S. § 84-28(b)(3) and Rule 8.1(b) by failing to provide information and documents as requested by the local grievance committee investigator; and
- (b) Failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f) by failing to respond to communications from the local fee dispute committee regarding Gaddy's fee dispute.

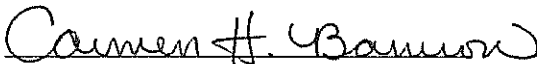
WHEREFORE, Plaintiff prays that

- 1. Disciplinary action be taken against Defendant in accordance with N.C.G.S. § 84-28 (c) and 27 N.C.A.C. 1B § .0114 as the evidence on hearing may warrant;
- 2. Defendant be taxed with the costs permitted by law in connection with this proceeding; and
- 3. For such other and further relief as the Hearing Panel deems appropriate.

This the 15 day of April, 2010.



Ronald G. Baker, Chair
Grievance Committee


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